UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FOURKITES, INC.,	)	CASE NO. 1:16-cv-02703-CAB
	)	
PLAINTIFF,	)	JUDGE CHRISTOPHER A. BOYKO
	)	
v.	)	
	)	
MACROPOINT, LLC,	)	**REPORT OF PARTIES' PLANNING**
	)	**MEETING UNDER FED. R. CIV. P.**
DEFENDANT.	)	**26(f), LR 16.3(-b)(3) AND LPR 2.1**
	)	

1. Pursuant to Fed. R. Civ. P. 26(f), LR 16.3(b)(3) and LPR 2.1, a meeting was held on March 7, 2017, and was attended by:

   R. Eric Gaum counsel for plaintiff
   Mark T. Deming counsel for plaintiff
   Arthur P. Licygiewicz counsel for defendant
   Jeffrey C. Metzcar counsel for defendant

2. The parties do not consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).

3. **Scheduling**

   a. **Proposed Schedule:**

Plaintiff's Proposed Schedule:

Deadline	**Date**
Invalidity and Unenforceability Contentions (L.P.R. 3.5 and 3.6, as modified by L.P.R. 3.8)	30 days after CMC
Noninfringement Contentions (L.P.R. 3.3 and 3.4)	30 days after CMC
Validity and Enforceability Contentions (L.P.R. 3.7)	20 days after service of Invalidity and Unenforceability Contentions
Infringement Contentions (L.P.R. 3.1 and 3.2)	20 days after service of Noninfringement Contentions
Exchange Proposed Terms for Construction (L.P.R. 4.1(a))	95 days after CMC
Exchange Final List of Terms for Construction (L.P.R. 4.1(c))	115 days after CMC
Exchange Preliminary Claim Constructions (L.P.R. 4.2(a))	15 days after L.P.R. 4.1(c)

Deadline	**Date**
Exchange Final Claim Constructions (L.P.R. 4.2(c))	5 days after L.P.R. 4.3(c) if expert identified in L.P.R. 4.2(b) disclosure or 50 days after L.P.R. 4.2(a) exchange if no expert identified in L.P.R. 4.2(b) disclosure
Opening Claim Construction Expert Disclosure (L.P.R. 4.3(a))	15 days after L.P.R. 4.2(a)
Rebuttal Claim Construction Expert Disclosure (L.P.R. 4.3(b))	15 days after L.P.R. 4.3(a)
Close Claim Construction Expert Discovery (L.P.R. 4.3(c))	15 days after L.P.R. 4.3(b)
Opening Claim Construction Briefs (L.P.R. 4.4(a))	15 days after L.P.R. 4.2(c)
Responsive Claim Construction Briefs (L.P.R. 4.4(b))	30 days after L.P.R. 4.4(a)
Joint Claim Construction and Prehearing Statement (L.P.R. 4.5(a))	5 days after L.P.R. 4.4(b)
Claim Construction Hearing (L.P.R. 4.6)	30 days after L.P.R. 4.4(b)
Final Infringement Contentions (L.P.R. 3.10(b))	15 days after Claim Construction Ruling
Close of Fact Discovery (L.P.R. 4.7)	30 days after Claim Construction Ruling
Advice of Counsel (L.P.R. 4.8)	90 days before close of fact discovery
Final Noninfringement Contentions and Final Invalidity and Unenforceability Contentions (L.P.R. 3.10(c))	30 days after Claim Construction Ruling
Final Validity and Enforceability Contentions (L.P.R. 3.10(d))	45 days after Claim Construction Ruling
Opening Expert Reports (L.P.R. 5.1(b))	60 days after Claim Construction Ruling
Rebuttal Expert Reports (L.P.R. 5.1(c))	30 days after L.P.R. 5.1(b)
Close of Expert Discovery (L.P.R. 5.2)	40 days after L.P.R. 5.1(c)
Dispositive Motion Deadline (L.P.R. 6.1)	10 days after L.P.R. 5.2
Trial (L.P.R. 6.2)	75 days after L.P.R. 6.1

Defendant's Proposed Schedule:

Deadline	Date
Infringement Contentions (L.P.R. 3.1 and 3.2)	15 days after the date of the Answer
Noninfringement Contentions (L.P.R. 3.3 and 3.4)	30 days after service of the Infringement Contentions
Invalidity and Unenforceability Contentions (L.P.R. 3.5 and 3.6, as modified by L.P.R. 3.8)	80 days after the date of the Answer If no claim of infringement is made by Defendant, then 30 days after the date of the Answer
Validity and Enforceability Contentions (L.P.R. 3.7)	20 days after service of Invalidity and Unenforceability Contentions
Exchange Proposed Terms for Construction (L.P.R. 4.1(a))	95 days after the date of the Answer
Exchange Final List of Terms for Construction (L.P.R. 4.1(c))	115 days after the date of the Answer
Exchange Preliminary Claim Constructions (L.P.R. 4.2(a))	15 days after L.P.R. 4.1(c)
Exchange Final Claim Constructions (L.P.R. 4.2(c))	5 days after L.P.R. 4.3(c) if expert identified in L.P.R. 4.2(b) disclosure or 50 days after L.P.R. 4.2(a) exchange if no expert identified in L.P.R. 4.2(b) disclosure
Opening Claim Construction Expert Disclosure (L.P.R. 4.3(a))	15 days after L.P.R. 4.2(a)
Rebuttal Claim Construction Expert Disclosure (L.P.R. 4.3(b))	15 days after L.P.R. 4.3(a)
Close Claim Construction Expert Discovery (L.P.R. 4.3(c))	15 days after L.P.R. 4.3(b)
Opening Claim Construction Briefs (L.P.R. 4.4(a))	15 days after L.P.R. 4.3(c)
Responsive Claim Construction Briefs (L.P.R. 4.4(b))	30 days after L.P.R. 4.4(a)
Joint Claim Construction and Prehearing Statement (L.P.R. 4.5(a))	5 days after L.P.R. 4.4(b)

Claim Construction Hearing (L.P.R. 4.6)	TBD, subject to the convenience of the Court's calendar
Final Infringement Contentions (L.P.R. 3.10(b))	15 days after Claim Construction Ruling
Final Noninfringement Contentions and Final Invalidity and Unenforceability Contentions (L.P.R. 3.10(c))	30 days after Claim Construction Ruling
Final Validity and Enforceability Contentions (L.P.R. 3.10(d))	45 days after Claim Construction Ruling
Close of Fact Discovery (L.P.R. 4.7)	75 days after Claim Construction Ruling
Advice of Counsel (L.P.R. 4.8)	45 days after Claim Construction Ruling
Opening Expert Reports (L.P.R. 5.1(b))	90 days after Claim Construction Ruling
Rebuttal Expert Reports (L.P.R. 5.1(c))	30 days after L.P.R. 5.1(b)
Close of Expert Discovery (L.P.R. 5.2)	40 days after L.P.R. 5.1(c)
Dispositive Motion Deadline (L.P.R. 6.1)	30 days after L.P.R. 5.2
Trial (L.P.R. 6.2)	75 days after L.P.R. 6.1 (subject to the convenience of the Court's calendar)

b. If the parties are advocating a departure from the dates set forth in the Patent Local Rules, set forth the basis for said departure:

Plaintiff:

This case includes, among other things, claims for declaratory judgments of invalidity and noninfringement of the patents-in-suit. Thus, the question of noninfringement will be in this case regardless of whether MacroPoint elects to make an affirmative counterclaim of infringement. As the Local Patent Rules reflect, the filing of a motion under Rule 12 does not relieve a party of its obligations to participate in discovery "absent an order from the Court stating otherwise." L.P.R. 1.3. Accordingly, notwithstanding MacroPoint's pending motion to dismiss, this case should proceed and discovery disclosures should commence in accordance with the deadlines set forth in the Local Patent Rules. Plaintiff is advocating a departure only to include deadlines for Noninfringement Contentions and Infringement Contentions that are not otherwise provided for by L.P.R. 3.8.

Defendant:

Consistent with L.P.R. 3.8, and to avoid unnecessary complication of the schedule, Defendants advocate triggering the initial patent disclosures and all subsequent deadlines required under the Local Patent Rules by the service of an Answer because no party has yet made a claim of patent infringement. This proposal avoids the risk of unnecessarily wasting the resources of the Court and the parties. In its schedule, Defendant is advocating a departure to eliminate an overlap between the close of any potential Claim Construction Expert Discovery and the filing of the Opening Claim Construction Brief to streamline the claim construction briefing process. Defendant also is advocating for a longer discovery closing period after the claim construction ruling (75 days versus 30 days) to enable the parties to serve and respond to written discovery, as well as take any additional fact depositions that may be warranted after the Court's claim construction ruling. And, as with claim construction expert discovery, Defendant is proposing a departure to eliminate an overlap between the close of fact discovery and the opening of expert discovery. Lastly, Defendant is suggesting that the Advice of Counsel deadline be set for a predetermined time after the Court's claim construction ruling, instead of before an unknown fact discovery deadline, which is based on the Court's claim construction ruling.

4. **Anticipated Motions**

a. The parties anticipate filing the following motions:

i. ___ Preliminary Injunction

ii. ___ Motion to add or substitute parties

iii. _X_ FourKites' Motion for Judgment on the Pleadings of Invalidity under 35 U.S.C. § 101. Proposed briefing schedule:

Opening Brief – 30 days after close of the pleadings
Response Brief – 30 days after service of Opening Brief
Reply Brief – 14 days after service of Response Brief

b. The following issues may be the proper subject of an early motion for summary judgment or partial summary adjudication:

i. ___ Inventorship or Indefiniteness

ii. ___ Invalidating sale, offer for sale, or display

iii. ___ Other

5. **Nature of Dispute**

a. Describe the field of the claimed invention:

9182295.1

Plaintiff:

The claimed invention relates to tracking freight.

Defendant:

The claimed inventions relate to particular processes and machines or groups of machines for monitoring the locations of vehicles or freight carried by vehicles through the use of a mobile device, including a system for receiving user consent to obtain such location information.

b. Claims asserted:

Plaintiff:

As set forth in the complaint, MacroPoint has accused FourKites and its customers of infringing the patents-in-suit through the use of FourKites' freight tracking systems and services.

Defendant:

As set forth in the Complaint, FourKites asserts that the patents-in-suit are invalid and that MacroPoint has engaged in anticompetitive activity. FourKites also presently seeks declaratory judgment that its freight tracking systems and services do not infringe the patents-in-suit.

c.

The parties cannot yet anticipate the number of claim terms that the Court must construe.

d. Describe the allegedly infringing activity or product:

Plaintiff:

As set forth in the complaint, MacroPoint has accused FourKites and its customers of infringing the patents-in-suit through the use of FourKites' freight tracking systems and services.

Defendant:

Presently, FourKites seeks declaratory judgment that its freight tracking systems and services do not infringe the patents-in-suit.

e. Describe any potentially non-infringing alternative designs:

FourKites is unaware of any designs that MacroPoint believes are non-infringing alternative designs.

f. The parties have not stipulated that the above-described designs do not infringe the patents in issue.

6. **Discovery**

a. If the parties anticipate needing to propound interrogatories and/or take depositions in excess of the number provided in the Federal Rules of Civil Procedure, set forth the proposed limit and basis for the request:

The parties do not anticipate propounding interrogatories or taking depositions in excess of the number provided in the Federal Rules of Civil Procedure

b. The parties have agreed to an electronic discovery plan. Absent agreement by the parties, the default standard for e-discovery set forth in Appendix K to the Local Rules applies.

c. The parties anticipate the following discovery issues:

The parties do not anticipate any discovery issues at this time.

7. **Protective Order**

a. The parties have not agreed to the form Patent Protective Order set forth in Appendix A to the Local Patent Rules.

b. The parties do plan to submit an alternative proposed protective order for adoption by the Court.

c. Identify any issues the Court should be aware of with respect to the confidentiality concerns of the parties:

The parties are not presently aware of any confidentiality concerns that need to be brought to the Court's attention.

8. **Claim Construction Hearing.** The parties propose the following format for the Claim Construction Hearing:

a. Order of presentation: Term-by-term; Defendant followed by Plaintiff

b. Anticipated number of witnesses: unknown Plaintiff; unknown for Defendant

c. Anticipated length of hearing: The parties presently expect a claim construction hearing, if necessary, will not take more than half a day.

9. The parties have consented, pursuant to Fed. R.Civ. P. 5(b)(2)(E), to the electronic exchange of pleadings, notices, discovery, and other mandated disclosures not otherwise served electronically via the Court's electronic filing system.

10. The parties have discussed settlement, but have not discussed the appropriateness of Alternative Dispute Resolution

Dated: March 13, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that March 13, 2017, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ R. Eric Gaum
One of the Attorneys for Plaintiff,
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